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STATE PROCUREMENT OFFICE
NOTICE OF AND REQUEST FOR EXEMPTION
FROM CHAPTER 103D, HRS

STATE PROCUREMENT OFFICE
STATE OF HAWAII

1. TO: Chief Procurement Officer
2. FROM: HDOA, Agricultural Resource Management Division

Department/Division/Agency

Pursuant to §103D-102(b)(4), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

3. Description of goods, services or construction:

Complete the construction of improvements to fix deficiencies and modernize the electrical systems throughout the Molokai Irrigation System. The proposed work includes but is not limited to demolition removal and disposal of PCB materials, replacing the electrical, control, and telemetering system with new systems, mechanical modifications to piping, and related work.

4. Name of Vendor: FOPCO, Inc.

Address: 2149 Lauwiliwili Street
Kapolei, Hawaii 96707

5. Price:

\$2,750,000.00

6. Term of Contract:

From: TBD

To: TBD

7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:

Attachment No. 1

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:

The project went out to bid as an IFB and the contractor, FOPCO, was selected based on the sealed competitive bid process. Due to a shortfall in available funds, the scope was reduced to include only the work inside the tunnel for a contract amount of \$2,793,280. The DOA requested and received an additional \$3,500,000 from the 2009 Legislature to complete the remaining work to improve the safety and efficiency of the system.

We are requesting an exemption from bidding so that we may negotiate with the vendor to complete all remaining improvements for the balance of the original bid price of \$5,392,345.56. The proposed exemption price (Item 5 above) is the remainder from the original bid price, \$2,599,065.56, plus compensation for extra work up to \$150,934.44.

10. A description of the agency's internal controls and approval requirements for the exempted procurement:

FOPCO was awarded the contract as the low bidder in the sealed competitive bid process. The low bid was higher than the available funds. The DOA opted to proceed with a reduced scope contract and negotiated the cost with FOPCO, inc. utilizing the bid items as a basis. In restoring these deleted line items, the original bid line item cost will similarly serve as a basis of comparison.


REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)

12. A list of agency personnel, by position, who will be involved in the approval process and administration of the contract:			
Name	Position	Involvement in Process	
Sandra Kunimoto	Chairperson, Board of Agr.	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
Brian Kau	Administrator, Chief Engineer	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
Glenn Okamoto	Engineer V	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration

13. Direct inquiries to:	Department: Agriculture Contact Name: Glenn Okamoto, P.E. Phone Number: 973-1123 Fax Number: 973-9467
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Agency shall ensure adherence to applicable administrative and statutory requirements

14. *I certify that the information provided above is, to the best of my knowledge, true and correct.*


 Department Head

12/15/10
 Date

Reserved for SPO Use Only	
15. Date Notice Posted <u>12/22/2010</u>	
The Chief Procurement Officer is in the process of reviewing this request for exemption from Chapter 103D, HRS. Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven calendar days or as otherwise allowed from the above posted date to: <div style="margin-left: 100px;"> Chief Procurement Officer State Procurement Office P.O. Box 119 Honolulu, Hawaii 96810-0119 </div>	
Chief Procurement Officer's comments: This request is approved based on the department's determination that procurement by competitive means through HRS chapter 103D is not practicable and not advantageous as the current contractor who was the low bidder of the IFB has: <ul style="list-style-type: none"> • verbally committed to honoring the original bid prices for the completion of the reinstated work; and • already completed the required Safety and Health plan as required in the contract specifications. <p>This approval is for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply. This award is required to be posted on the Awards Reporting System.</p>	

16.

☒ **APPROVED**
☐ **DISAPPROVED**
☐ **NO ACTION REQUIRED**


 Chief Procurement Officer

3/23/11
 Date

Attachment No. 1

Request for Exemption from Chapter 103D, HRS (Cont.)

Continued from page 1 – This supplemental information is to clarify item 8.

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:

Chronology of Events:

In order to improve the safety and efficiency of the Molokai Irrigation System, the HDOA procured a consultant to design improvements to the MIS electrical, control and telemetry systems. The project went out to bid (IFB) and the bids of three contractors were opened on March 6, 2008. The low bid came in at \$5,392,345.56, well over the available funds of \$3,064,334.81. The HDOA negotiated a scope reduction with the low bidder, FOPCO Inc., and awarded a contract in which all but 12 of the original 45 lump sum items were removed from the scope.

The contract was executed and Notice to Proceed was issued. The contractor mobilized at the project site, obtained safety permits and completed the work.

The DOA has since received a \$3,500,000 appropriation for the Molokai Irrigation System (MIS). FOPCO has verbally committed to honor the original bid prices for the completion of the reinstated work.

The HDOA is requesting your approval to be exempted from competitive procurement in order that it may negotiate with the contractor to complete the remaining bid items at the original bid price.

Justification:

Design and Administrative Costs:

Having to advertise and bid for this project will be costly as our Consultant will be required to prepare an entirely new set of bid documents and to respond to any new Requests for Information (RFI). Doing so essentially doubles the administrative costs related to advertising and bidding a project, contract execution, and managing the project.

Costs Associated with Mobilization:

FOPCO already has in-place staging areas, vehicles, equipment, and its familiar with the project site. Using another contractor would duplicate many costs associated with mobilization.

Costs and Liability for Hazardous Working Conditions:

The project includes work within the five mile long tunnel and in the valley beyond the tunnel. Because of the nature of the work and the work environment, a detailed, job-specific Safety and Health Plan are required before the commencement of work. FOPCO has previously completed the Confined Space Work Plan as required in the Contract Specifications. Should a different contractor be selected to perform the additional work, he would need to spend the time and money to create a Safety and Health Plan, which FOPCO already completed. Additionally FOPCO already has experience working in the tunnel; even with the proper training, the risk of accident is higher for any contractor with no experience working in the tunnel.

Time Considerations:

Bidding this project will extend the schedule and delay the completion of the full project due to additional design requirements for permitting, bidding and contract processing.

Health and Safety Concerns:

A major element of the additional work is developing communication through the tunnel. As long as there is no communication through the tunnel, the life safety of the Irrigation System Workers is in greater danger because there is no way to report an injury that occurs within the tunnel or on the far side of the tunnel.

The automation of many of the tasks performed by the Irrigation System Workers will reduce the current risk of injury by reducing the frequency that workers must services remote portions of the irrigation system.

The project also includes SCADA control and monitoring of the Kualapuu Reservoir, which aids in early detection of dam safety concerns. The sooner these measures are implemented, the sooner potentially hazardous conditions can be detected and mitigated, saving the state money and potentially preventing a major disaster.

Summary:

In summary, bidding this project will result in additional costs, and increased risk of preventable injury, property damage, or disaster. It is clear that the intent was for the original project, which was competitively bid and opened on March 6, 2008, to be constructed in its entirety. However, due to funding, the scope of the original project was reduced down to the replacement of the electrical cable running through the tunnel because this was the greatest hazard to the health and safety of the Irrigation System Workers. Due to the impacts of not funding all items of work, additional funds are being made available to reinstate the original scope of this work. Considering this history and the consequences, it is not practical or advantageous to the State to competitively bid this project again; hence, we are requesting your consideration in our request for exemption

from Chapter 103D, HRS. The exemption will enable the HDOA Agricultural Resource Management Division.